

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1625 OF 2015

THE STATE OF MAHARASHTRA
VERSUS
RAISING EKANATH RAJPUT & OTHERS

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Advocate for Applicant : Mr P G Borade APP
Advocate for Respondents : Mr K C Sant

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CORAM : S.S. SHINDE & V.K. JADHAV, JJ.

Dated: December 14, 2016

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PER COURT :-

1. Heard the learned APP appearing for the applicant-State and learned counsel appearing for respondents. Perused the notes of evidence and also the findings recorded by the trial court.

2. Upon careful perusal of the two dying declarations at Exh.113 recorded by the Executive Magistrate and dying declaration at Exh.106 recorded by the P.S.I., so far as accused no.1 namely Raising Ekanath Rajput is concerned, there is consistency in both the dying declarations in as much as specific overt act is attributed to him that he poured kerosene and set deceased Jayshree ablaze. However, so far as other

accused i.e. respondents no. 2 to 5 are concerned, they are not named in the dying declaration and oral dying declaration. The learned Judge after appreciating the entire evidence brought on record has taken a view that as against respondents no. 2 to 5 even the offence under section 498-A is also not disclosed.

3. Upon considering the evidence in its entirety the findings recorded by the trial court as against respondents no. 2 to 5 appears to be in consonance with the evidence on record and therefore application of respondents no.2 to 5 stands rejected, however, as already observed in both the dying declarations specific overt act is attributed to respondent no.1 and it is brought on record that there is sufficient evidence against respondent no.1. Therefore, prima facie it appears that, the findings recorded by the trial court qua accused no.1 Raising Rajput are not in consonance with the evidence brought on record. Therefore case is established to seek leave to file appeal against said respondent no.1 Raising only. Accordingly, application to the extent of respondent no.1 Raising Eknath Rajput

is concerned, the same is allowed.

4. Appeal is admitted as against respondent no.1. On admission learned counsel waives service of notice for respondent no.1. Action under section 390 of Cr.P.C. to follow against Raising before the Sessions Court, Jalgaon.

5. Criminal Application accordingly disposed of.

(V.K. JADHAV, J.)

(S.S. SHINDE, J.)

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aaa/-